



Billing Code: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100217095-2258-06]

RIN 0648-AY56

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;  
Reef Fish Fishery of the Gulf of Mexico; Amendment 32 Supplement

AGENCY: National Marine Fisheries Service (NMFS), National  
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this supplement to the regulations that implemented management measures described in Amendment 32 to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Amendment 32) prepared by the Gulf of Mexico Fishery Management Council (Council). After the February 10, 2012, publication of the final rule for Amendment 32, NMFS identified inconsistencies in the regulatory text regarding the quotas and annual catch limits (ACLs) for "other shallow-water grouper" (Other SWG) that needed correction. This final rule revises the regulatory text regarding the quotas and ACLs for Other SWG. In addition, this final rule implements some minor revisions to the regulatory text to improve the clarity of the

regulations.

DATES: This rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Electronic copies of Amendment 32, which includes a final environmental impact statement, a regulatory flexibility analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at <http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm>.

FOR FURTHER INFORMATION CONTACT: Peter Hood, Southeast Regional Office, NMFS, telephone 727-824-5305; email: [Peter.Hood@noaa.gov](mailto:Peter.Hood@noaa.gov).

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico (Gulf) is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

#### Background

On, April 6, 2012, NMFS published a proposed rule (77 FR 20775) to supplement the regulations that implemented management measures described in Amendment 32 (77 FR 6988, February 10, 2012). That proposed rule outlined the rationale for the actions contained in this final rule and is not repeated here.

Management measures implemented through this final rule

reinstate the commercial Other SWG quotas and the stock complex commercial ACLs for Other SWG, as established in the final rule which implemented the ACLs and Accountability Measures Amendment for Reef Fish, Red Drum, Shrimp, and Coral Fisheries of the Gulf of Mexico (Generic ACL Amendment) (76 FR 82044, December 29, 2011), as well as remove the commercial shallow-water grouper (SWG) quotas and commercial SWG ACL erroneously included in the rule implementing Amendment 32. Specifically, this final rule implements the commercial quotas (commercial ACLs), in gutted weight, for Other SWG combined: for fishing year 2012--509,000 lb (230,879 kg), for fishing year 2013--518,000 lb (234,961 kg), for fishing year 2014--523,000 lb (237,229 kg), and finally, for fishing year 2015 and subsequent fishing years--525,000 lb (238,136 kg) as well as the stock complex ACLs for Other SWG, in gutted weight: 688,000 lb (312,072 kg) for 2012, 700,000 lb (317,515 kg) for 2013, 707,000 lb (320,690 kg) for 2014, and 710,000 lb (322,051 kg) for 2015 and subsequent years.

In addition, this final rule implements some minor non-substantive revisions to improve the clarity of the regulations. First, NMFS revises the term "other SWG" to read "Other SWG" throughout the 50 CFR part 622 regulations to improve the clarity of the regulations as they apply in the Gulf. This rule also amends the definition of SWG to include the definition for

Other SWG. In the Gulf, Other SWG still includes black grouper, scamp, yellowfin grouper, and yellowmouth grouper. Second, in two instances in the regulations, sentences within a paragraph are reordered to improve clarity. Third, a sentence is deleted in the regulations because it is already stated in the preceding paragraph and is therefore redundant.

Discussion of the management measures contained in Amendment 32 is provided in the previous proposed and final rules (see 76 FR 67656, 77 FR 6988, 77 FR 20775) as well as in Amendment 32, and is not repeated here.

#### Comments and Responses

No comments were received in relation to the proposed rule published on April 6, 2012 (77 FR 20775).

#### Changes From the Proposed Rule

NMFS has made minor, non-substantive revisions to the regulatory text contained in the proposed rule. In § 622.20, paragraphs (a)(6) and (a)(7), the term "once" is revised to read "after" to improve the clarity of the regulations. In § 622.49, paragraph (a)(4)(ii)(B), NMFS amended the term "target catch (ACT)" to read "ACT" to be consistent with the language used within Amendment 32. This clarification of the regulatory text is not substantive and will alleviate confusion for Gulf reef fish fishermen regarding the regulations.

## Classification

The Regional Administrator, Southeast Region, NMFS has determined that the actions contained in this final rule are necessary for the conservation and management of the reef fish fishery in the Gulf and that they are consistent with Amendment 32, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No comments were received regarding the certification provided in the proposed rule (77 FR 20775, April 6, 2012). No changes to the final rule were made in response to public comments. As a result, a final regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and  
recordkeeping requirements, Virgin Islands.

Dated: July 26, 2012

---

Alan D. Risenhoover,  
Director, Office of Sustainable Fisheries,  
performing the functions and duties of the  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622,  
is amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read  
as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.2, the definition for "Shallow-water grouper  
(SWG)" is revised to read as follows:

§ 622.2 Definitions and acronyms.

\* \* \* \* \*

Shallow-water grouper (SWG) means, in the Gulf, gag, red

grouper, black grouper, scamp, yellowfin grouper, and yellowmouth grouper. Other shallow-water grouper (Other SWG) means, in the Gulf, SWG excluding gag and red grouper (i.e., black grouper, scamp, yellowfin grouper, and yellowmouth grouper). In addition, for the purposes of the IFQ program for Gulf groupers and tilefishes in § 622.20, speckled hind and warsaw grouper are also included as Other SWG as specified in § 622.20(a)(6).

\* \* \* \* \*

3. In § 622.20, paragraph (a) introductory text, the second sentence of paragraph (a)(4), paragraphs (a)(5)(i) and (a)(5)(ii), the second sentence of paragraphs (a)(6), (a)(7), (b)(3)(i), and the first sentence of paragraph (b)(6)(i) are revised to read as follows:

§ 622.20 Individual fishing quota (IFQ) program for Gulf groupers and tilefishes.

(a) General. This section establishes an IFQ program for the commercial sectors of the Gulf reef fish fishery for groupers (including DWG, red grouper, gag, and Other SWG) and tilefishes (including goldface tilefish, blueline tilefish, and tilefish). For the purposes of this IFQ program, DWG includes yellowedge grouper, warsaw grouper, snowy grouper, speckled hind, and scamp, but only as specified in paragraph (a)(7) of

this section. For the purposes of this IFQ program, Other SWG includes black grouper, scamp, yellowfin grouper, yellowmouth grouper, warsaw grouper, and speckled hind, but only as specified in paragraph (a)(6) of this section. Under the IFQ program, the RA initially will assign eligible participants IFQ shares, in five share categories. These IFQ shares are equivalent to a percentage of the annual commercial quotas for DWG, red grouper, gag, Other SWG, and tilefishes, based on their applicable historical landings. Shares determine the amount of IFQ allocation for Gulf groupers and tilefishes, in pounds gutted weight, a shareholder is initially authorized to possess, land, or sell in a given calendar year. Shares and annual IFQ allocation are transferable. See § 622.4(a)(2)(ix) regarding a requirement for a vessel landing groupers or tilefishes subject to this IFQ program to have an IFQ vessel account for Gulf groupers and tilefishes. See § 622.4(a)(4)(ii) regarding a requirement for a Gulf IFQ dealer endorsement. Details regarding eligibility, applicable landings history, account setup and transaction requirements, constraints on transferability, and other provisions of this IFQ system are provided in the following paragraphs of this section.

\* \* \* \* \*

(4) \* \* \* IFQ allocation for the five respective share



categories is derived at the beginning of each year by multiplying a shareholder's IFQ share times the annual commercial quota for gag, red grouper, DWG, Other SWG and tilefishes. \* \* \*

(5) \* \* \*

(i) Red grouper multi-use allocation. (A) At the time the commercial quota for red grouper is distributed to IFQ shareholders, a percentage of each shareholder's initial red grouper allocation will be converted to red grouper multi-use allocation. Red grouper multi-use allocation, determined annually, will be based on the following formula:

$$\text{Red Grouper multi-use allocation (in percent)} = 100 * \frac{[\text{Gag ACL} - \text{Gag commercial quota}]}{\text{Red grouper commercial quota}}$$

(B) Red grouper multi-use allocation may be used to possess, land, or sell either red grouper or gag under certain conditions. Red grouper multi-use allocation may be used to possess, land, or sell red grouper only after an IFQ account holder's (shareholder or allocation holder's) red grouper allocation has been landed and sold, or transferred; and to possess, land, or sell gag, only after both gag and gag multi-use allocation have been landed and sold, or transferred. However, if gag is under a rebuilding plan, the percentage of

red grouper multi-use allocation is equal to zero.

(ii) Gag multi-use allocation. (A) At the time the commercial quota for gag is distributed to IFQ shareholders, a percentage of each shareholder's initial gag allocation will be converted to gag multi-use allocation. Gag multi-use allocation, determined annually, will be based on the following formula:

$$\text{Gag multi-use allocation (in percent)} = 100 * [\text{Red grouper ACL} - \text{Red grouper commercial quota}] / \text{Gag commercial quota}$$

(B) Gag multi-use allocation may be used to possess, land, or sell either gag or red grouper under certain conditions. Gag multi-use allocation may be used to possess, land, or sell gag only after an IFQ account holder's (shareholder or allocation holder's) gag allocation has been landed and sold, or transferred; and to possess, land, or sell red grouper, only after both red grouper and red grouper multi-use allocation have been landed and sold, or transferred. Multi-use allocation transfer procedures and restrictions are specified in paragraph (b)(4)(iv) of this section. However, if red grouper is under a rebuilding plan, the percentage of red grouper multi-use allocation is equal to zero.

(6) \* \* \* For the purposes of the IFQ program for Gulf

groupers and tilefishes, after all of an IFQ account holder's DWG allocation has been landed and sold, or transferred, or if an IFQ account holder has no DWG allocation, then Other SWG allocation may be used to land and sell warsaw grouper and speckled hind.

(7) \* \* \* For the purposes of the IFQ program for Gulf groupers and tilefishes, after all of an IFQ account holder's Other SWG allocation has been landed and sold, or transferred, or if an IFQ account holder has no SWG allocation, then DWG allocation may be used to land and sell scamp.

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(i) \* \* \* The owner or operator of a vessel landing IFQ groupers or tilefishes is responsible for ensuring that NMFS is contacted at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing, estimated grouper and tilefish landings in pounds gutted weight for each share category (gag, red grouper, DWG, Other SWG, tilefishes), vessel identification number (Coast Guard registration number or state registration number), and the name and address of the IFQ dealer where the groupers or tilefishes are to be received. \* \* \*

\* \* \* \* \*

(6) \* \* \*

(i) IFQ share cap for each share category. No person, including a corporation or other entity, may individually or collectively hold IFQ shares in any share category (gag, red grouper, DWG, Other SWG, or tilefishes) in excess of the maximum share initially issued for the applicable share category to any person at the beginning of the IFQ program, as of the date appeals are resolved and shares are adjusted accordingly. \* \* \*

\* \* \* \* \*

4. In § 622.42, paragraph (a)(1)(iii) introductory text and paragraph (a)(1)(iii)(A) are revised to read as follows:

§ 622.42 Quotas.

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(iii) Shallow-water groupers (SWG) have separate quotas for gag and red grouper and a combined quota for other shallow-water grouper (Other SWG) species (including black grouper, scamp, yellowfin grouper, and yellowmouth grouper), as specified in paragraphs (a)(1)(iii)(A) through (C) of this section. These quotas are specified in gutted weight, that is, eviscerated but otherwise whole.

(A) Other SWG combined. (1) For fishing year 2012--509,000 lb (230,879 kg).

(2) For fishing year 2013--518,000 lb (234,961 kg).

(3) For fishing year 2014--523,000 lb (237,229 kg).

(4) For fishing year 2015 and subsequent fishing years--525,000 lb (238,136 kg).

\* \* \* \* \*

5. In § 622.49, paragraphs (a)(3) and (a)(4)(ii)(B) are revised to read as follows:

§ 622.49 Annual catch limits (ACLs) and accountability measures (AMs).

(a) \* \* \*

(3) Other shallow-water grouper (Other SWG) combined (including black grouper, scamp, yellowfin grouper, and yellowmouth grouper)--(i) Commercial sector. The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial Other SWG. The commercial ACL for Other SWG is equal to the applicable quota specified in § 622.42(a)(1)(iii)(A).

(ii) Recreational sector. If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock complex ACL specified in paragraph (a)(3)(iii) of this section, then during the following fishing year, if the sum of

the commercial and recreational landings reaches or is projected to reach the applicable ACL specified in paragraph (a)(3)(iii) of this section, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of that fishing year.

(iii) The stock complex ACLs for Other SWG, in gutted weight, are 688,000 lb (312,072 kg) for 2012, 700,000 lb (317,515 kg) for 2013, 707,000 lb (320,690 kg) for 2014, and 710,000 lb (322,051 kg) for 2015 and subsequent years.

(4) \* \* \*

(ii) \* \* \*

(B) If gag are not overfished, and in addition to the measures specified in paragraph (a)(4)(ii)(A) of this section, if gag recreational landings, as estimated by the SRD, exceed the applicable ACLs specified in paragraph (a)(4)(ii)(D) of this section, the AA will file a notification with the Office of the Federal Register to maintain the gag ACT, specified in paragraph (a)(4)(ii)(D) of this section, for that following fishing year at the level of the prior year's ACT, unless the best scientific information available determines that maintaining the prior year's ACT is unnecessary.

\* \* \* \* \*

[FR Doc. 2012-18665 Filed 07/30/2012 at 8:45 am; Publication  
Date: 07/31/2012]